

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
NPCR, INC., dba NEXTEL PARTNERS)
For Designation as an Eligible)
Telecommunications Carrier in the)
State of Hawaii.)

DOCKET NO. 03-0104

ORDER NO. 23617

Filed August 29, 2007
At 8 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

RECEIVED

2007 AUG 30 A 9:02

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

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Docket No. 03-0104

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ORDER

By this Order, the commission dismisses the Verified Motion to Amend ETC Designation jointly filed by NPCR, INC. ("NPCR") and SPRINTCOM, INC. ("Sprintcom") (collectively, "Movants") on August 7, 2007.¹

I.

Background

On April 25, 2003, NPCR filed an application in this docket requesting that the commission designate it as an eligible telecommunications carrier ("ETC") under federal law; and that it designate certain rural and non-rural service areas referred to in Exhibit E of its application as its service area. NPCR, a provider of commercial mobile radio services within the State of Hawaii, requested the ETC designation as a prerequisite to being eligible to receive federal universal service support.

¹Verified Motion to Amend ETC Designation; Verification; Exhibits A - H; and Certificate of Service, filed on August 7, 2007 (collectively, "Motion to Amend").

NPCR served copies of its application on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). NPCR and the Consumer Advocate are the only parties to this docket.

By Decision and Order No. 21089, filed on June 25, 2004, the commission approved NPCR's request, subject to certain conditions.

On February 7, 2006, the commission, on its own motion, amended the annual reporting requirements set forth in Decision and Order No. 21089, by replacing said requirements with the annual certification requirements adopted by the commission in In re Public Util. Comm'n, Docket No. 05-0243, Decision and Order No. 22228, filed on January 17, 2006.²

On August 7, 2007, Movants filed their Motion to Amend, seeking to "amend the ETC designation granted to NPCR to include Sprintcom for non-rural telephone company areas where NPCR was designated."³

In support of their Motion to Amend, Movants state:

1. Following NPCR's designation as an ETC, Sprint Nextel Corporation ("Sprint") acquired NPCR. The

²Order No. 22274, filed on February 7, 2006. In Docket No. 05-0243, the commission opened an investigation that culminated in the adoption of annual certification requirements that apply to telecommunications providers that have been designated as ETCs by the commission. The three commission-designated ETCs (which included NPCR) and the Consumer Advocate were named as parties to Docket No. 05-0243.

³Motion to Amend, at 2; see also id. at 18 (prayer for relief).

Federal Communications Commission and the commission approved the transfer of control of the licenses associated with NPCR's service.⁴

2. NPCR and Sprintcom are subsidiaries of Sprint. In Hawaii, NPCR and Sprintcom "are the operating entities that together provide Sprint service."⁵ "NPCR, as well as other operating entities providing NEXTEL brand service, have been integrated into Sprint and provide service in conjunction with other Sprint operating entities."⁶

3. The granting of the Motion to Amend "will conform the NPCR designation to subsequent corporate changes, will allow Sprint to provide universal service through both of its Hawaii operating entities, and will allow Sprint to utilize federal universal service funding for the benefit of Hawaii's consumers."⁷

II.

Discussion

The Motion to Amend was jointly filed by NPCR and Sprintcom, yet Sprintcom is not a party to this proceeding, which was first opened in April 2003. NPCR, at the time, had no ownership affiliation with Sprint. Now, more than three years

⁴See In re Sprint Comm. Co. L.P., Docket No. 2006-0052, Decision and Order No. 22466, filed on May 15, 2006; see also In re Sprint Comm. Co., L.P., Docket No. 05-0045, Decision and Order No. 21715, filed on April 4, 2005.

⁵Motion to Amend, at 2.

⁶Motion to Amend, at 1-2.

⁷Motion to Amend, at 2.

following NPCR's ETC designation in this docket, NPCR and Sprintcom, by way of their motion, seek to amend NPCR's ETC designation to include Sprintcom for the non-rural service areas where NPCR was designated. As Sprintcom is not a party to this docket, it lacks the ability to seek to amend Decision and Order No. 21089 in this docket.

More importantly, a public utility that seeks to amend its commission-issued authorization should file a separate application that opens a new docket for the commission's review and adjudication. This approach provides: (1) the Consumer Advocate, an ex officio party in all commission proceedings, with a meaningful opportunity to review and investigate the merits of the application; and (2) interested persons with the opportunity to file a timely motion to intervene or participate, in accordance with HAR chapter 6-61, subchapter 4. While Movants explain in their Motion how Sprintcom appears to meet the necessary requirements for designation as an ETC, the commission is mindful that the Consumer Advocate had no meaningful opportunity to review and investigate the merits of Movants' request, including the issuance of information requests if necessary.⁸ In addition,

⁸HAR § 6-61-41, governing motions practice before the commission, states in relevant part:

Motions. (a) All motions, except when made during a hearing, shall:

- (1) Be in writing;
- (2) State the grounds for the motion;
- (3) Set forth the relief or order sought; and
- (4) Be accompanied by a memorandum in support of the motion, if the motion involves a question of law.

interested persons have no avenue by which to seek to intervene or participate in reviewing the merits of Movants' request.

Moreover, an applicant, by filing an application, must prove anew that it meets the requisite elements to justify the requested relief. In the commission's view, the application process is generally the appropriate forum for an applicant to amend its commission-issued authority, rather than the filing of a motion in the same docket following the commission's grant of authority.⁹

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(c) An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion,

(d) A party who does not oppose a motion or who intends to support a motion or who desires a continuance shall notify the commission and the opposing attorneys within five days after being served

HAR § 6-61-41. Here, on August 7, 2007, Movants hand delivered copies of the Motion to Amend upon the Consumer Advocate. Thus, the deadline for the Consumer Advocate to state its opposition to or support of the motion, or to seek a continuance, was August 14, 2007, pursuant to HAR §§ 6-61-21, 6-61-22, and 6-61-41. The Consumer Advocate did not file a response to the Motion to Amend.

⁹See, e.g., In re Qwest Comm. Corp., Docket No. 2007-0021, Decision and Order No. 23345, filed on April 5, 2007 (amendment of a telecommunications carrier's certificate of authority to include facilities-based telecommunications services); In re Coral Wireless, LLC, Docket No. 2006-0457, Decision and Order No. 23234, filed on January 31, 2007 (amendment of a telecommunications carrier's certificate of registration to include its expanded service territory); In re Kukio Util. Co., LLC, Docket No. 2006-0414, Decision and Order No. 23492, filed on June 14, 2007 (amendment of a public utility's certificate of public convenience and necessity to include its expanded service territory); and In re Kapalua Waste Treatment Co., Ltd., Docket No. 2006-0075, Decision and Order No. 23261, filed on February 15, 2007 (amendment of a public utility's certificate of

In sum, the commission recognizes that its rules of practice and procedure should "be liberally construed to secure the just, speedy, and inexpensive determination of every proceeding."¹⁰ Nonetheless, based on its articulated concerns, the commission finds that a new proceeding is warranted to appropriately review and adjudicate Movants' requested relief. Thus, the commission dismisses the joint Motion to Amend. NPCR and Sprintcom may file an application in a new docket seeking the commission's approval to amend the ETC designation granted to NPCR by the commission in Decision and Order No. 21089, filed on June 25, 2004.

III.

Orders

THE COMMISSION ORDERS:

NPCR and Sprintcom's Motion to Amend, filed on August 7, 2007, is dismissed.

public convenience and necessity to include its expanded service territory).

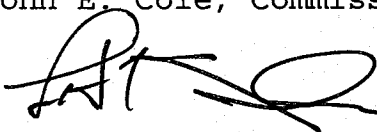
¹⁰HAR § 6-61-1. In addition, Sprint's claim that "it will receive approximately \$36,000 per year in additional federal universal service funding if this Motion to Amend is granted," see Motion to Amend, at 9, does not nullify the need for NPCR and Sprintcom to file an application.

DONE at Honolulu, Hawaii AUG 29 2007.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

03-0104.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23617 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: AUG 29 2007